

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 312

Introduced by Assembly Member Ruskin

February 10, 2005

An act to add Section 1985.8 to the Code of Civil Procedure, relating to medical records.

LEGISLATIVE COUNSEL'S DIGEST

AB 312, as amended, Ruskin. Medical records: subpoena authority.

The California Constitution accords specified rights to a defendant in a criminal action, including, but not limited to, the right to compel attendance of witnesses on the defendant's behalf and to have the assistance of counsel for the defendant's defense. Existing law authorizes that counsel to obtain specified records pursuant to a subpoena duces tecum, including medical records, as specified.

This bill would require any subpoenaing party or his or her representative causing a subpoena duces tecum to be issued or served on a medical provider for the release of a patient's medical records in a criminal proceeding to, among other things, receive valid authorization from, or provide notice to, the patient *or the patient's legal representative* prior to the release of those records and provide notice to the prosecutor. *The bill would exempt any law enforcement agency or prosecuting attorney from those provisions.* The bill would provide for civil and criminal remedies for a failure to comply with those requirements, including a misdemeanor provision for specified injuries. By making a violation thereof a crime, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1985.8 is added to the Code of Civil
2 Procedure, to read:

3 1985.8. (a) Notwithstanding Section 1985.7 or any other
4 provision of law or rule of court, any subpoenaing party or his or
5 her representative causing a subpoena duces tecum to be issued
6 or served on a medical provider for the release of a patient's
7 medical records in a criminal proceeding, shall include with that
8 subpoena all of the following:

9 (1) A valid authorization from the patient *or the patient's legal*
10 *representative* or notice to the patient *or the patient's legal*
11 *representative*.

12 (2) A protective order attached to the subpoena duces tecum.

13 (3) Notice to the prosecuting attorney.

14 (b) The civil and criminal remedies in Sections 56.35 and
15 56.36 of the Civil Code shall apply to a violation of subdivision
16 (a).

17 (c) *This section does not apply to any law enforcement agency*
18 *or prosecuting attorney*.

19 SEC. 2. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the
24 penalty for a crime or infraction, within the meaning of Section
25 17556 of the Government Code, or changes the definition of a
26 crime within the meaning of Section 6 of Article XIII B of the
27 California Constitution.

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